

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,110

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare establishing an overpayment of Food Stamps based on a calculation error made by the Department. The issue is whether the Department can assess an overpayment amount when the recipient is not at fault for the overpayment.

FINDINGS OF FACT

1. The petitioner has been a Food Stamp recipient on behalf of her seven member family (including five children under the age of eleven) for some time and has always accurately reported her circumstances to the Department. During a review in late 1996, she reported to the Department that she had \$607.20 in her checking account, \$1,630.77 in four savings accounts in her children's names, and \$1,568.20 in bonds also in her four children's names, as well as a twenty year old snowmobile. The savings accounts and bonds represent money which the petitioner was attempting to put aside for the children's college educations.
2. After receiving the reports of these assets, the Department continued to pay the petitioner Food Stamps during the months of March, April, May, June and July of 1997. The total amount she received in these months was \$2,176. In July of 1997, during a quality control review of her case, the Department discovered that the petitioner had the above mentioned assets and determined that she had excess assets and should not have received Food Stamps going back to March 1 of 1997.
3. A notice was mailed to the petitioner on July 15, 1997, advising her that she would no longer be eligible for Food Stamps as of August 1, 1997, because her "resources are \$2,040.26⁽¹⁾ more than the Department standards allow, \$2,000." She was also advised that the resource limitations would "result in an overpayment of Food Stamps for the period of March 1st through July 31st" and that she would be notified later of this overpayment.
4. On July 18, 1997, the Department mailed the petitioner a notice of overpayment stating that she had been overpaid because she failed to give "correct, complete and timely information" on her situation. The petitioner appealed that decision by letter dated July 28, 1997, and asked that no further Food Stamps be sent until the matter was cleared up.

5. On August 19, 1997, a "corrected notice" was sent to the petitioner advising her that the \$2,176 overpayment occurred because "the Department did not determine correct resources for your household." The notice further stated:

Because of the federal regulations, the Department requires that you repay this overpayment.

There are several ways you may repay the overpayment:

- You may repay the entire amount now in cash and/or Food Stamps.
- You may repay part of the overpayment now and the rest in monthly installments.
- You may repay the overpayment in monthly installments by:
- Sending a set amount of cash and/or Food Stamps each month.

6. The petitioner does not dispute that she was ineligible for the months at issue and that she received \$2,176 in Food Stamps to which she was not entitled. She argues, however, that it is not fair that she should have to pay back any amounts which were sent to her before the Department discovered its error on July 15, 1997. She said she had one \$65 Food Stamp booklet which she would gladly repay from that time period. She does not intend to spend her children's college accounts to become eligible for Food Stamps again and does not expect to receive Food Stamps in the near future. Because the money cannot be recouped from her Food Stamp benefits, she argues that it will cost the Department more to collect this sum than it is worth.

ORDER

The decision of the Department is affirmed.

REASONS

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). "A claim shall be handled as an administrative error claim if the over issuance was caused by State agency action or failure to take action..."

F.S.M. § 273.18(a)(2). A state agency is required to "take action to establish a claim against any household that received an over issuance due to an...administrative error if . . . [a] state agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment . . ." so long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. F.S.M. § 273.18(b)(2)(ii). If administrative error occurred, the size of the Department's claim must equal the difference between what the household should have received and what the household was actually allotted. F.S.M. § 273.18(c)(1)(ii).

State agencies are required to initiate collection actions against all households who were overpaid due to administrative error unless it is a non-fraud claim of less than \$35. F.S.M. § 273.18(d)(1)(i)(A).

Collection actions are initiated in administrative error claims by a demand letter. F.S.M. § 273.18(d)(3) (iii). If the client is continuing to receive Food Stamps, the letter must notify the petitioner of the amount of the allotment to be recouped which is either the greater of ten percent of the household's monthly allotment or \$10 per month when the claim is based on administrative error. F.S.M. § 273.18(g)(4)(ii). Otherwise, the Department has a wide range of methods for collecting payments which it is required to pursue with the overpaid recipient, including negotiated repayment schedules based on ability to pay. See generally F.S.M. 273.18 (g).

The petitioner has requested that no overpayment be established against her for the time prior to the July 15, 1997, discovery of the administrative error. The regulations outlined above make it clear that not only can the Department establish an overpayment for any time within twelve months of the discovery of an over issuance due to administrative error, but it is required to do so. There is no room for negotiation of the amount of time covered by the over issuance and the Department correctly established an overpayment for the entire five months at issue. However, the Department does have room to negotiate the terms of any repayment which are required for any recipient who is currently not receiving benefits. The Department is not required to suspend collection of such sums but may do so if the cost of further collection action is likely to exceed the amount that can be recovered. F.S.M. § 273.18(e)(1).

The Department has yet to negotiate a repayment with the petitioner and certainly has not reached a conclusion about the cost of collection of this debt. The petitioner cannot ask the Board to rule that collection is too expensive to pursue. That decision is a financial one for the Department to make. The regulations merely gives the Department, and not the recipient that option. It must be concluded that the Department correctly established the claim against the petitioner in spite of her innocence in this matter and is required to collect any amounts for which she was not qualified. As she agrees that she was ineligible for \$2,176 she received in Food Stamps, the Department must attempt to collect that amount.

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1. The Department valued the snowmobile at \$200, a figure which the petitioner does dispute. The figure was arrived at through use of a table in a Blue Book. The petitioner did not present any evidence as to a different value. However, even if the snowmobile were valued at \$0, the petitioner would still be well over the \$2,000 resource limit so establishment of a figure for this item is not essential to the outcome of this decision.